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NELL LANEY Tenant/Petitioner, v. WOODNER APARTMENTS Housing Provider/Respondent.	Case No.: RH-TP-06-28801

FINAL ORDER

I. Introduction

This Order follows an evidentiary hearing at which Tenant Petitioner Nell R. Laney sought to prove the illegality of certain rent increases alleged in Tenant Petition (TP) 28,801 filed with the Rental Accommodations and Conversion Division (RACD) on October 3, 2006. The property at issue is Ms. Laney's apartment at 3636 16th Street, N.W., Unit A1161. The case is before an Administrative Law Judge because of the Office of Administrative Hearings (OAH) Establishment Act, a law transferring the adjudicatory authority of several District of Columbia agencies to OAH. D.C. Official Code § 2-1831.01. On October 1, 2006 that transfer of authority included cases from the Rent Administrator at the Department of Consumer and Regulatory Affairs (DCRA). *Id*. § 2–1831.03(b-1)(1).

Tenant and Housing Provider/Respondent, Woodner Apartments, both appeared with counsel at the hearing on March 26, 2007, during which the parties presented testimony and submitted documentary evidence. Tenant was represented by Nathaniel Brown and Ann Marie

Hay, Esquire, from the D.C. Law Students in Court Program. Housing Provider was represented by Phillip Felts, Esquire.

At the March 26 hearing, Petitioner sought to present claims related to events that occurred in 2003, 2004, 2005 and 2006, asserting her petition was broad enough in scope to cover all four years, although the only rent increase form appended to the petition was from 2006. Respondent objected, claiming he was only on notice concerning allegations brought for 2006. Tenant was permitted to present evidence on the 2006 claims at that first day of hearing. The matter was then adjourned to allow Housing Provider adequate time to prepare a defense on claims for the other three years. I allowed Petitioner to present evidence on the earlier claims because her Tenant Petition, perhaps not a model of clarity, was filed before she was represented by Counsel and because a second day of hearing would prevent prejudice to Housing Provider by giving adequate time to prepare a defense. See Order dated April 6, 2007.

Tenant and Housing Provider appeared at the continued portion of this hearing on May 22, 2007, during which the parties presented testimony and submitted documentary evidence concerning years 2003, 2004 and 2005. Tenant was represented by counsel who presented testimony from Tenant. Housing Provider was also represented by counsel who presented testimony from one witness, Ms. Livia Hall, an accounting manager at the D.C. location of the Woodner Apartments.

II. Background

One of the rent increases at issue was the one filed in July 2003 for an August 2003 implementation. The Tenant Petition was filed on October 3, 2006. Housing Provider correctly asserts the statute of limitations bars claims for the rent increase implemented on August 1, 2003.

D.C. Official Code § 42-3502.06(e) provides that, "a tenant may challenge a rent adjustment implemented under any section of this chapter by filing a petition with the Rent Administrator under § 42-3502.16. No petition may be filed with respect to any rent adjustment, under any section of this chapter, more than 3 years after the effective date of the adjustment . . . ." Because Tenant filed her petition with the Rent Administrator on October 3, 2006, she is barred from challenging any rent increases implemented prior to October 3, 2003. *See* Petitioner Exhibit (PX) 8. Therefore, the increases at issue in this Order are those for 2004, 2005 and 2006.

The exhibits are listed in the appendix. Based on the testimony and documentary evidence, I make the following findings of fact and conclusions of law.

III. Findings of Fact

1. On October 3, 2006, Tenant filed TP 28,801 with the Rent Administrator. The petition alleged that: (1) Housing Provider failed to file the proper rent increase forms with the RACD -- specifically "it was not properly certif[i]ed with a signature of the owner or agent," and (2) a rent increase was taken while Petitioner's housing accommodation was not in substantial compliance with the D.C. Housing Regulations.

2. Tenant, Ms. Nell R. Laney, has been a resident at 3636 16th Street, N.W., Apartment A1161, the housing accommodation, since 1997. Housing Provider imposed a rent increase effective on July 1, 2004, increasing the rent on her apartment from $545 to $561 per month. PX 9. Rent was increased in July 2005 from $561 to $576. PX 3. Then in July of 2006 her rent was up to $623 a month. PX 1. The rent increases were imposed annually, effective in July

or August. All three increases were attributed to the annual cost of living increase based on the CPI-W, published annually by the Rental Housing Commission.[1]

Challenge to Rent Increases

A. *Lack of Signature*

3. Housing Provider's signature does not appear on any of the notices of rent increase received by Petitioner. PX 1, PX 2, PX 9. However, the relevant Notices of Increase in Rent Charged (PX 1, PX 3 and PX 9) included (1) the current rent; (2) the amount of the rent increase; (3) the effective date of the rent adjustment; and the date and authorization for the rent ceiling adjustment taken and perfected (Annual CPI). They also include the typed name of the Housing Provider, "Jonathan Woodner Co."

B. *Alleged Housing Code Violations*

4. Tenant has had problems with cockroaches and mice in the apartment, although pest services are present at the housing accommodation two to three times per week. Each unit in the building is exterminated every three months, unless the tenant requests additional exterminations. Tenant has been receiving extermination services twice a month, yet the roaches return. As a result of the roaches, Tenant must wash her dishes, disinfect her sinks

[1] The application of the CPI-W increase, or the adjustment of general applicability, was described by the District of Columbia Court of Appeals as follows: "The adjustment of general applicability allows housing providers the option to increase rent ceilings annually in order to keep up with inflation. The adjustment 'shall be equal to the change during the previous calendar year, ending each December 31, in the Washington, D.C. Standard Metropolitan Statistical Area Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) for all items during the preceding calendar year,' subject to a cap of ten percent. D.C. [Official] Code § 42-3502.06(b). It is the RHC's duty to determine the amount of the general applicability adjustment annually and publish it by March 1 of each year. *See id.* and D.C. [Official] Code § 42-3502.02(a)(3). The adjustment in published annually in the D.C. Register with an effective date of May 1." *Sawyer Prop. Mgmt. Inc. v. D.C. Rental Hous. Comm'n,* 877 A.2d 96, 104 (D.C. 2005) (footnotes omitted).

and cannot bake/cook, as roaches are drawn to any food left in the kitchen. The time period during which roaches have been a problem for Tenant is not clear.

5. Tenant has experienced a periodic lack of hot water in her unit, such that she was unable to wash dishes or take a hot shower. She had to carry hot water from the stove to the bathroom in order to bathe. The time period for hot water problem is not clear from the record.

6. At an uncertain date Tenant had a problem with water from her bathroom ceiling. The Housing Provider was notified and problem remedied, though the specific time the problem existed before the repair is not clear from the record. To corroborate the presence of water in Tenant's bathroom, she provided this court with two work orders regarding a leaking toilet (PX 5) and a leaking pipe (PX 6). However, these work orders are dated 11/3/2006 and 12/1/2006 respectively, *after* the date of the tenant petition.

7. The trash room in the common area of the building was problematic, because the door to the trash room swells shut in humid conditions. As a result, tenants place their refuse on the floor, which attracts roaches to the area.

8. On December 5, 2005, the windows in Tenant's apartment were replaced, but screens still had not been installed as of the date of the hearing. Due to the lack of screening, Tenant was unable to open her window during the summer months, as flying insects would enter her apartment and roaches would crawl in the window from outside the building.

IV. Discussion

1. This matter is governed by the Rental Housing Act of 1985, D.C. Official Code § 42-3501.01-3509.07 (Act), the District of Columbia Administrative Procedure Act (DCAPA), D.C. Official Code §2-501-510, the District of Columbia Municipal Regulations (DCMR), 1 DCMR 2800-2899, 1 DCMR 2920-2941, and 14 DCMR 4100-4399.

2. Claimant argues that the rent increases in 2004 and 2005 were illegal because notices lacked a signature and because there were housing code violations in the unit. Those arguments are considered in turn.

A. *Lack of signature*

3. Tenant asserts that Housing Provider must certify the Notices of Rent Increases with his or her signature. (Pet'r Post-Hr'g Mem., p. 6.). She alleges that the notices of rent increase were ineffective because each lacked a signature. The applicable rule provides:

> (a) The housing provider shall provide the tenant of the rental unit not less than thirty (30) days written notice, pursuant to § 904 [§ 42-3509.04] of the Act, in which the following items shall be included:
>
> (1) The amount of the rent adjustment;
> (2) The amount of the adjusted rent;
> (3) The date upon which the adjusted rent shall be due; and
> (4) The date and authorization for the rent ceiling adjustment taken and perfected pursuant to § 4204.9.
>
> (b) The housing provider shall *certify* to the tenant, with the notice of rent adjustment, that the rental unit and the common elements of the housing accommodations are in substantial compliance with the housing regulations or, if not in substantial compliance, that any noncompliance is the result of tenant neglect or misconduct …

14 DCMR 4205 (emphasis added).

4. The relevant Notices of Increase in Rent Charged (PX 1, PX 3 and PX 9) contained the information required by the Rental Housing Act and the Housing Regulations, including (1) the current rent; (2) the amount of the rent increase; (3) the effective date of the rent adjustment; and (4) the date and authorization for the rent ceiling adjustment taken and perfected (Annual CPI). Tenant had on that form the correct name of the Housing Provider.

5. As authority for the assertion that a signature is required, Tenant makes an analogy to Super. Ct. Civ. R. 11. (Pet'r Post-Hr'g Mem., p. 6.). However, her analogy to Super. Ct. Civ. R. 11 is misplaced. Rule 11 specifically and unequivocally requires a signature. Although 14 DCMR 4205 requires certification, the purpose is to certify that the property is in substantial compliance with the D.C. Housing Regulations The name of the Housing Provider appears on the notices, giving Petitioner the information necessary for a challenge. Typically a signature is required for such a certification, but with the use of computer notices, identification of the sender and the necessary elements listed, I am satisfied that the writing meets the requirement for a certification. This case has similarities to an Oregon Tax case in which the court allowed a written Notice of Deficiency (NOD) to stand as certified although it had not been signed. *Dep't of Revenue v. Faris*, 19 OTR 178 (2006). Legislative history in *Faris* revealed that a hand signing requirement had been removed from the relevant statute "to streamline the NOD issuing process by exclusive utilization of computer-generated NODs." *Id*. at 184. In this case, the notices were also computer generated, making a signature difficult to obtain and not likely to make certification more trustworthy. Furthermore, the purpose of the notice of rent or rent ceiling increase is to give Tenant notice of a change in their rent/rent ceiling, *Sawyer Prop. Mgmt., supra* at 12. That purpose has

been met. There is no provision in the Act or the District of Columbia Municipal Regulations (DCMR) mandating that Housing Provider certify the notices with his signature. Several of the notices of rent/rent ceiling increase do not even contain signature lines for Housing Provider. PX 8, PX 9, PX 10. Thus, this administrative court finds the Notices of Rent Increase and/or Rent Ceiling Increases were properly filed with the RACD and served on the tenant.

6. Housing Provider filed the proper Notices of Increase in Rent Charged and Notices of Change in Rent Ceiling with the RACD for rent increases of $16 (effective August 1, 2004, PX 9) and $15 (effective August 1, 2005, PX 3). Therefore, those increases were permissible under the Rental Housing Act because they complied with 14 DCMR 4205 and D.C. Official Code § 42-3502.06(b), *unless* they were taken when substantial housing code violations existed.

B. *Alleged Substantial Housing Code Violations*

7. Tenant asserts the rent increases effective on August 1, 2004, August 1, 2005, and July 1, 2006 were implemented while substantial housing code violations existed. More specifically, Tenant alleges problems with roach/mice infestation, a periodic lack of hot water, ceiling leaks in her apartment due to water leaking from the bathroom located upstairs from her apartment, improper disposal of trash/garbage, and increasing problems with security in her building. Additionally, Tenant testified she has not had any window screens since late 2005, when her windows were replaced.

8. Although Tenant testified about several issues, which could plausibly constitute substantial housing code violations, Tenant offered insufficient evidence to meet her burden of proving

these conditions existed at the time Housing Provider implemented rent increases in 2004 or 2005, except for the lack of screens.

9. The applicable statute, D.C. Official Code § 42-3502.08 states:

> [T]he rent for any rental unit shall not be increased above the base rent unless:
>
> (a)(1)(A) The rental unit and the common elements are in substantial compliance with the housing regulations, if noncompliance is not the result of tenant neglect or misconduct. Evidence of substantial noncompliance shall be limited to housing regulations violation notices issued by the District of Columbia Department of Consumer and Regulatory Affairs and other offers of proof the Rental Housing Commission shall consider acceptable through its rulemaking procedures.

10. Title 14 DCMR 4216.2 defines "substantial compliance with the housing code" as:

> the absence of any substantial housing violations as defined in [D.C. Official Code § 42-3501.03(35)] including, but not limited to the following:
>
> …
>
> (b) Frequent lack of hot water;
>
> …
>
> (g) Leaks in the roof or walls;
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> …
>
> (i) Infestation of insects or rodents;
>
> …
>
> (m) Accumulation of garbage or rubbish in the common areas;
>
> …
>
> (r) Doors lacking required locks;
>
> (t) Inadequate ventilation of interior bathrooms; and
>
> (u) Large number of housing code violations, each of which may be either substantial or non-substantial, the aggregate of which is substantial, because of the number of violations.

11. D.C. Official Code § 42-3501.03(35) states: "[s]ubstantial violation" means the presence of any housing condition, the existence of which violates the housing regulations, or any other

statute or regulation relative to the condition of residential premises and may endanger or materially impair the health and safety of any tenant or person occupying the property."

12. Under 14 DCMR 4205.4(b), a housing provider:

> shall certify to the tenant, with the notice of rent adjustment, that the rental unit and the common elements of the housing accommodations are in substantial compliance with the housing regulations or, if not in substantial compliance, that any noncompliance is the result of tenant neglect or misconduct …

13. In this case, "the crucial inquiry is whether, in fact, an alleged substantial housing code violation exists at the time the rent increase [was] taken. The burden is on the Tenant to establish that fact." *Hutchinson v. Home Reality, Inc,* TP 20,523 (RHC Sept. 5, 1989), citing *Nwanko v. William J. Davis, Inc.,* TP 11,728 (RHC Aug. 6, 1986), aff'd, 542 A.2d 827 (D.C. 1988). To meet the burden, Tenant must submit proof of "the dates and duration of those violations." *Payne v. A & A Marbury, LLC*, OAH No. RH-TP-06-28616 at 11 (Final Order, May 16, 2007), citing *Russell v. Smithy Braedon Prop. Co.,* TP 22,361 (RHC July 20, 1995) at 16. Further, Tenant must "present evidence to show that Housing Provider was on notice of the violations." *Payne, supra* at 11, *citing Gavin v. Fred A. Smith Co.,* TP 21,198 (RHC Nov. 18, 1992) at 4.

14. This administrative court finds Tenant's testimony credible that roaches have been a problem in her unit. Roaches are explicitly set forth in 14 DCMR 4216.2(i) defining substantial housing code violations. However, the burden is on the Tenant to prove the dates and duration of the infestations, that roach infestations were occurring *at the time of each rent increase*, and that she notified Housing Provider. The requisite specificity is lacking in this case. There is no evidence before this court speaking to whether the roaches were a problem

at the time the rent increases were taken by Housing Provider (i.e. on August 1, 2004, August 1, 2005 or July 1, 2006). Nor is there evidence proving the dates and duration of the problems. Although Tenant submitted a Notice of Violation citing insects as a problem in Tenant's unit (PX 4), the Notice was dated December 11, 2006 -- two months after the tenant petition was filed. Accordingly, this court finds Tenant has not met her burden of proof on this issue.

15. The list of "substantial housing code violation[s]" in 14 DCMR 4216.2 is not all inclusive. Rather, it includes the items specified, "but is not limited to" those items. 14 DCMR 4216.2. Tenant's lack of screening is a substantial housing code violation, especially considering: (1) Housing Provider clearly had notice, where it arranged the installation of new windows (i.e. without screens); (2) a considerable amount of time has passed since the installation of the new windows; and (3) Tenant has not been able to use her windows for ventilation since December, 2005.

16. Section 806.1 of 14 DCMR states: "the owner or licensee of each residential building shall provide screens for all openings to the external air from March 15 through November 15 (both dates inclusive) of each year." Further, "screens shall be maintained to prevent effectively the entrance of flies and mosquitoes into the building." 14 DCMR 806.3.

17. Tenant has not had screens in her unit since December 11, 2005. The lack of screening, Tenant's only source of ventilation for her apartment, is a substantial housing code violation under 14 DCMR 4216.2.

18. Housing Provider implemented a rent increase, effective July 1, 2006 (PX 1) in violation of D.C. Official Code § 42-3502.08, as Tenant's unit contained a substantial housing code violation at the time a rent increase was implemented.

19. Tenant is entitled to refunds of the rent increases beginning July 1, 2006 to the second date of hearing, May 22, 2007, in the total amount of $503.37.

20. Thus, because Housing Provider increased Tenant's rent effective July 1, 2006 while Tenant did not have screens, this court awards Tenant a rent refund in the amount of $503.37 (see Damages, infra).

21. Tenant is entitled to interest on her refunds at 6% per annum through the date of this decision for each monthly payment of the illegal rent increases through the date of the hearing. Tenant is awarded interest of $24.68 for a total award of $528.05.

C. *Damages and Interest Calculations*

22. Because this court finds that Housing Provider increased Tenant's rent while not in substantial compliance with the housing code regulations, Tenant is entitled to a rent refund. Tenant did not have screens beginning in December, 2005, and the problem had not been abated at the time of the May 22, 2007 hearing. Housing Provider collected an increase in Tenant's rent beginning July 1, 2006 in the amount of $47.00 per month. PX 1. Thus, Tenant is entitled to a rent refund in the amount of $47.00 per month multiplied by 10.71 months,[2] for a total of $503.37.

[2] July 1, 2006 through May 22, 2007 is equivalent to 10 months and 22 days. 22 days ÷ 31 days/month = 0.71 months.

23. Moreover, the D.C. Housing Regulations provide for the award of simple interest on rent refunds at the interest rate used by District of Columbia Superior Court from the date of the violation to the issuance of the decision. 14 DCMR 3826.1 - 3826.3; *Marshall v. District of Columbia Rental Hous. Comm'n*, 533 A.2d 1271, 1278 (D.C. 1987). Table 1 below computes the interest due on each month's overcharge at the six percent annual interest rate (.005% monthly interest rate) set for judgments of the Superior Court of the District of Columbia on the date of the hearing. On the record, I cannot find that the rent increases were imposed in bad faith; therefore, this administrative court will not impose treble damages. *See* D.C. Official Code § 42-3509.01(a), *Vicente v. Jackson,* TP 27,614 (RHC Sept. 19, 2005) at 12 (a finding of bad faith to justify treble damages requires "egregious conduct, dishonest intent, sinister motive, or a heedless disregard of duty," citing *Quality Mgmt. v. D. C. Rental Hous. Comm'n,* 505 A.2d 73, 75 (D.C. 1986), and *Third Jones Corp. v. Young,* TP 20,300 (RHC Mar. 22, 1990)). There is also no evidence of willfulness on Housing Provider's part; thus, this court will not impose a fine. D.C. Official Code § 42-3509.01(b).

Table 1
Interest Chart
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Month	Overcharge	Months held	Interest	Total
July 06	$47	16	0.005	3.76
Aug 06	$47	15	0.005	3.53
Sept 06	$47	14	0.005	3.29
Oct 06	$47	13	0.005	3.06
Nov 06	$47	12	0.005	2.82
Dec 06	$47	11	0.005	2.59
Jan 07	$47	10	0.005	2.35
Feb07	$47	9	0.005	2.16
Mar 07	$47	8	0.005	1.88
Apr 07	$47	7	0.005	1.65
May 07	$47	6	0.005	1.41
Jun 07	$47	5	0.005	1.18
July 07	$47	4	0.005	.94

Aug 07	$47	3	0.005	.71
Sept 07	$47	2	0.005	.47
Oct 07	$47	1	0.005	.35
Total interest				32.15

24. Tenant's total award is equal to overcharges from July 1, 2006 to the day of the hearing, May 22, 2006, for a total of $503.37. With the addition of interest through date of decision the total is: total rent refunds ($503.37) plus interest through the date of decision ($32.15), for a total in the amount of $535.52.

V. Conclusion

25. Although Tenant has demonstrated that a number of substantial housing code violations may have existed during the past three years, she has not provided the degree of specificity regarding dates, duration and notice necessary to sustain her burden of proof.

26. Tenant has, however, met her burden of proving the lack of screening in her unit (which this court deems a substantial housing code violation for reasons stated *supra*) at the time Housing Provider increased Tenant's rent (effective July 1, 2006). Therefore, Tenant is entitled to an award of $535.52 as calculated above.

VI. Order

Accordingly, it is this 30th day of October 2007:

ORDERED that Housing Provider Woodner Apartments pay Tenant Ms. Nell R. Laney $535.52 and it is further

ORDERED that either party may move for reconsideration of this Final Order within ten business days under OAH Rule 2937, 1 DCMR 2937; and it is further

ORDERED that the appeal rights of any party aggrieved by this Order are stated below.

October 30, 2007

_____/s/_____
Margaret A. Mangan
Administrative Law Judge